

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17044
[Redacted])	
)	DECISION
Petitioner.)	
)	
_____)	

On October 7, 2002, the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax, penalty and interest in the total amount of \$12,944 for the period February 1, 1999 through September 30, 2000. The taxpayer filed a timely appeal and petition for redetermination on December 9, 2002. On December 27, 2002, the Tax Policy Section of the Commission sent a letter advising the taxpayer of his hearing rights. A hearing was held with the taxpayer on January 15, 2003. The Commission hereby issues its decision based on information in the audit file and information obtained at the hearing.

DISCUSSION OF FACTS AND CONCLUSIONS

FACTS

The taxpayer is an Idaho-based real property contractor who contracted with [Redacted], a sales tax exempt entity (owner), to install doors, hardware and accessories provided by the owner.

The auditor held as taxable the cost of the materials used to improve and alter the owner's real property. The taxpayer timely protested the audit results and has made no payment on the deficiency. The protest letter requested that the taxable amount be reduced by \$118, stating that the taxpayer reviewed the cost of the materials with the owner and now disputes the auditor's figures by this amount. The taxpayer also asked that the 25% penalty on the tax be abated, citing his lack of knowledge of the law.

CONCLUSION

The basis for the audit's conclusions are found in the following statute, cited in pertinent part:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property. (*Idaho Code §63-3609(a)*)

Although the taxpayer was not the buyer of the building materials, he used them to improve or alter real property. "Use" is defined in the statute as follows:

The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, ...(*Idaho Code §63-3615(b)*)

While the preceding two statute references are sufficient to place the burden of tax on the taxpayer, it is noteworthy that the real estate owner has no liability, as it is a non-profit hospital whose purchases are exempt by statute from sales and use taxes. Further, in those cases when the buyer/owner has no liability, the statute emphasizes that the burden of tax is solely on the contractor user:

- (1) There are exempted from the taxes imposed by this chapter:
 - (a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; ...
- (4) The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to

improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract. (*Idaho Code §63-3622O*)

Therefore, the Commission finds the assertion of tax by the auditor to be appropriate and has subtracted \$118 based on information provided at the hearing. The Commission also finds the addition of interest to the taxpayer's liability appropriate per Idaho Code §§ 63-3632 and 63-3045.

Idaho Code §63-3046 provides for the addition of the 25% penalty imposed:

(c)(1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed . . .

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return. (*Idaho Code §63-3046*)

In this decision the Commission exercises its discretion to reduce the penalty from 25% to 5% of the tax (*Idaho Code §63-3047*). The taxpayer has not been audited previously for sales and use tax, and the audit deficiency is confined to a single tax issue.

WHEREFORE, the Notice of Deficiency Determination dated October 7, 2002, directed to Peter S. Leriget, dba Willow Creek Custom Carpentry is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED and MADE FINAL.

THEREFORE, IT IS HEREBY ORDERED and THIS DOES ORDER that taxpayer pay the following tax, penalty and interest, calculated to May 11, 2003 at a daily rate of \$1.19.

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$8,690	\$435	\$2,204	\$11,329

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
